IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Brij Mohan & ors. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No.134/2007

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Date of Order: February 02, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. G.R. Goyal, for the petitioners.
Mr. Rameshwar Dave, Deputy Govt. Advocate.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners seek recalling of the order dated 28-11-2006 passed by this Court in S.B. Criminal Miscellaneous Petition No. 872/2006.

Heard learned counsel for the parties.

It is contended by the learned counsel for the petitioners that in page No.3 of the order, it has been recorded that "it has not been disputed by the counsel for the petitioners that the samples of the seeds were taken from the petitioners." This fact has not been admitted by the counsel for the petitioners, whereas in the instant case, the samples were taken

from accused Mohan Lal and not from the present petitioners and as they are the manufacturers and the samples were taken from accused Mohan Lal, therefore, in the order dated 28-11-2006, the fact recorded is contrary to the facts on record and no such statement was made by the counsel for the petitioners.

It appears that in the opening of the order, it has been stated that the petitioners are the manufacturers and, therefore, it appears that the learned counsel is right in saying that the samples have not been recovered from the petitioners but they were recovered from accused Mohan Lal. To this extent, the order deserves to be corrected and it is made clear that the samples, as stated by the learned counsel for the petitioners, were recovered from accused Mohan Lal, which on being analysed, did not conform to the requisite percentage of germination.

In Super Seeds Pvt. Ltd. (M/s.) Vs. State of Rajasthan & Anr., 2006 (2) Cr.L.R. (Raj.) 1722, this Court held that Section 22 of the Seeds Act, 1966 pertains to Seed Analysis Report and provides that the Seed Testing Laboratory shall analyse the seed samples in accordance with the prescribed procedure and deliver the Seed Analysis Report to the Certification Agency as soon as may be, but not later than 30 days from the date of receipt of the samples unless the seed is subjected to such tests which require more than 30 days for

completion of the test. In that case, the Seed Testing Laboratory, Rajasthan, Jaipur had not delivered the analysis report to the Haryana State Seeds Certification Agency within thirty days from the date of its report and, therefore, the prosecution based on the report of the State Seed Laboratory,Rajasthan, Jaipur was held to be bad in the eye of law.

Learned counsel for the petitioners submits that sub-section (4) of Section 14 of the Seeds Act, 1966 provides that where the Seed Inspector takes any action under Clause (a) of sub-section (1), he shall, as far as possible, call not less than two persons to be present at the time when such action is taken and take their signatures on a memorandum to be prepared in the prescribed form and manner. According to the learned counsel, this provision is to be held mandatory. In sub-section (4) of Section 14, Clause (a) (1) of the Seeds Act, expression "as far as possible" is used, it is clear that ordinarily the sample be taken in the presence of two persons, but it does not mandate that there has to be two persons present when sample of seeds is taken and, therefore, this contention is not acceptable.

So far as the statement of learned counsel recorded in the order that "it has not been disputed by the learned counsel for the petitioners that the samples of the seeds were taken from the petitioners" is concerned, it appears to be

recorded in the order contrary to the stand taken in the petition and, therefore, in my view, to this extent, it is made clear that the learned counsel for the petitioners did not admit that the samples were taken from the present petitioners. But so far as reviewing and recalling the order of this Court dated 28-11-2006 are concerned, in my view, even the Code does not contemplate a provision for reviewing or recalling the order. I am fortified by the catena of decisions of the Hon'ble Supreme Court. In Moti Lal Vs. State of Madhya Pradesh, AIR 1994 SC 1544; a Three Judge Bench of the Hon'ble Supreme Court in ' Adalat Prasad Vs. Rooplal Jindal & ors., JT 2004 (7) SC 243; and another Three Judge Bench decision of the Hon'ble Supreme Court in Subramanim Sethuraman Vs. State of Maharashtra & Anr., 2004 Cri.L.J. 4609. In this view of the matter, the decision relied on by the learned counsel for the petitioners has no application to the facts of the instant case.

In these circumstances, it is made clear that the samples of the seeds were not taken from the petitioners but from co-accused Mohan Lal. With this clarification, the criminal miscellaneous petition stands dismissed.

(H.R. PANWAR), J.

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